

REQUEST FOR APPROVAL

To: Howard Levenson
Deputy Director, Materials Management and Local Assistance

From: Cara Morgan
Branch Chief, Local Assistance and Market Development

Request Date: November 15, 2017

Decision Subject: State Agency and Large State Facility AB 75 Diversion Program
Compliance -- 2015/2016 Biennial Report Review Findings

Action By: December 19, 2017

Summary of Request:

Pursuant to requirements of Public Resources Code (PRC) Section 41921 that State agencies and large State facilities divert at least 50 percent of their solid waste, staff is submitting the biennial report review findings for Fiscal Year 2015/2016 for the 228 reporting State agencies and large State facilities. Note: This total does not include one non-compliant agency, 1A District Agricultural Association, that will continue on corrective action from the prior compliance cycle.

Staff reviewed the waste diversion activities reported by each of the 228 State agencies and large State facilities, including their compliance with the Mandatory Commercial Recycling and Mandatory Commercial Organics Recycling laws (PRC Sections 42649 and 42649.8, respectively). Nine State agencies/facilities were found to have program gaps regarding their organics recycling programs as required pursuant to PRC Section 42649.8. These State agencies/facilities were informed of the gap and were provided 30 days to provide a plan on how they would correct the gap (see Analysis and Findings for details). All responded with appropriate information and will be monitored by staff to ensure implementation. In addition, as a part of this review, 47 of the State agencies are being recommended for a finding of non-compliance due to gaps in their procurement of recycled-content products.

Recommendation:

Staff recommends approval of the biennial report review findings for 2015/2016 for the 228 reporting State agencies and large State facilities as listed in attachments 1-4.

Deputy Director Action:

On the basis of the information and analysis in this Request for Action and the findings set out herein, I hereby approve the biennial review findings for the 2015/2016 reports for the 228 State agencies and large State facilities as indicated below:

- Approve the finding that the 127 State agencies and facilities listed in Attachment 1 submitted full reports as required and are adequately implementing solid waste diversion programs and are compliant with statutory diversion requirements.
- Approve the finding that the 48 State agencies and facilities listed in Attachment 2 submitted modified reports as required and are adequately implementing solid waste diversion programs and are compliant with program implementation.
- Approve the finding that the 6 State agencies and facilities listed in Attachment 3 submitted full reports as required, are fully implementing diversion programs and have made a good faith effort to be compliant with statutory diversion requirements.
- Continue to coordinate with the Department of General Services (DGS) Purchasing Authority Unit on compliance activities for the 47 State agencies and facilities that were not compliant with their recycled-content purchasing requirements. (Attachment 4)

Dated: _____

 Howard Levenson, Deputy Director
 Materials Management and Local Assistance

Attachments:

1. Attachment 1: Agencies/Facilities Submitting Full Reports Finding of Adequate Program Implementation and Compliance With Statutory Diversion Requirements
2. Attachment 2: Agencies/Facilities Submitting Modified Reports Finding of Adequate Program Implementation
3. Attachment 3: Agencies/Facilities Submitting Full Reports Finding of Good Faith Effort to Adequately Implement Programs and to Achieve the Diversion Statutory Requirements
4. Attachment 4: Agencies/Facilities Found to be Not In Compliance with Program Requirements

Background Information:

The State Agency Integrated Waste Management Act (Assembly Bill 75, Chapter 764, Statutes of 1999) took effect on January 1, 2000. Among other requirements, the Act mandated that State agencies develop and implement an integrated waste management plan. State agencies and large State facilities must divert at least 50 percent of their solid waste from disposal facilities by and after January 1, 2004. In addition, annually by May 1, each State agency and large facility must submit a report to CalRecycle that summarizes progress in implementing solid waste diversion programs.

In 2000, the California Integrated Waste Management Board (CalRecycle's predecessor) approved a policy that provides an alternative reporting structure to those agencies that have fewer than 200 employees and generate less than 100 tons of waste annually. This alternative

reporting structure is called a 'modified' annual report and allows State agencies that meet these criteria to submit information only on the types of on-going programs; they do not have to report total disposal. Under the modified annual report structure, qualifying State agencies that have implemented the number and types of effective programs which represent the reasonable and feasible solid waste diversion opportunities available for that agency will be found in compliance with statutory diversion mandates.

Per policy adopted in 2007 by the California Integrated Waste Management Board, CalRecycle staff annually review the information submitted by all reporting agencies/facilities. Every two years, CalRecycle staff conducts a formal compliance review of selected agency/facility reports for which the submitted data indicate a likelihood of inadequate program implementation and/or non-compliance with statutory diversion mandates. The biennial compliance review is CalRecycle's independent evaluation of each State agency and large State agency's progress in implementing solid waste diversion programs and in meeting the statutory diversion requirement. As a result of this review, CalRecycle may find that: 1) a State agency or large State facility has adequately implemented its diversion programs and has achieved the statutory diversion requirement; 2) a State agency or large State facility has made a good faith effort to implement diversion programs and achieve the statutory diversion requirement; or 3) a State agency or large State facility has failed to adequately implement solid waste diversion programs, and the process of compliance oversight should commence.

The nature of the annual review and biennial formal review changed in 2008 with passage of the Per Capita Disposal Measurement System Act (SB 1016, Chapter 343, Statutes of 2008), which modified the way State agencies measure their progress toward meeting the statutory waste diversion mandate. Under this Act, State agencies are still required to maintain the 50 percent waste diversion requirement as required by the State Agency Integrated Waste Management Act. However, an assessment of solid waste diversion program implementation and per capita disposal, as opposed to an estimate of diversion, are now used as indicators of agency/facility progress toward meeting the mandate.

There are several new and important aspects of this review cycle:

- 1) Mandatory Commercial Recycling -- State agencies are also required to adhere to mandatory commercial recycling requirements pursuant to PRC Section 42649, which is part of CalRecycle's efforts to achieve the goal of reducing landfill disposal and achieving 75% reduction, recycling, and composting of solid waste by 2020 (Assembly Bill 341, Chapter 476, Statutes of 2011). Under PRC Section 42649, State agencies that generate four cubic yards or more of commercial solid waste per week must arrange for recycling services for that material. CalRecycle verifies implementation during site visits and analysis of annual reports from State agencies.
- 2) Mandatory Commercial Organics Recycling -- Beginning in 2016 State agencies/facilities also are subject to PRC Section 42649.8, which requires businesses that generate certain amounts of organic waste per week to recycle that organic material, on or after April 1, 2016. Under the law, State agencies are defined as a business and, therefore, must abide by requirements of the new law. The law requires that State agencies/facilities arrange for

recycling services for the following types of organic material: food waste; green waste; landscape and pruning waste; nonhazardous wood waste; and food-soiled paper. If State agencies/facilities meet the reporting thresholds in the statute, then they are required to report on their compliance with these recycling requirements, commencing with their 2016 Annual Report that was submitted in May 2017. CalRecycle staff verified implementation of State agencies and facilities' implementation of organics recycling programs during site visits and analysis of annual reports from State agencies. The 2016 threshold was for businesses that generate 8 cubic yards of organics/week.

- 3) State Agency Buy Recycled Campaign (SABRC) Requirements -- Commencing with the 2013/2014 biennial review cycle, staff is now including a finding for those agencies that were found to not be compliant with SABRC procurement requirements, as noted below (see "Relationship Between State Agency Diversion Reporting and the State Agency Buy Recycled Campaign" below and Attachment 4).

Analysis and Findings:

The following is a summary of staff's review findings for all reporting State agencies and large State facilities. With the exception of the one non-reporting agency on continued compliance (1A District Agricultural Association), reports from both 2015 and 2016 years were analyzed, along with prior year reports, for the purpose of determining disposal trends and program implementation history. A total of 228 agencies were required to report (171 with full reports and 57 with modified reports) in 2015 and 2016. All 228 State agencies and large State facilities submitted a report.

Note that the total number of agencies mentioned does not include 125 community colleges or districts that were not required to submit their annual report for the 2015 and 2016 reporting cycles.¹ In addition, this does not include the remaining 49 District Agricultural Associations that were not required to and did not submit a report during the 2016 reporting cycle.²

¹ Community Colleges were not required to submit a calendar year 2012 annual waste report that is inclusive of Fiscal Years 2011/12 and 2012/13 in accordance with the Budget Act and the conditions of Government Code 17581.5 (a)(1) and (2) (as added by AB 114, Chapter 43, Statutes of 2011). This temporary suspension has been extended annually and currently effects any reports that are inclusive of Fiscal Years 2014/2015 and 2015/2016.

² As of January 1, 2015 pursuant to AB 2490 (Chapter 342, Statutes of 2014) Sections 10 and 15, California District Agricultural Associations (DAA) are excluded from the definition of "state agency" for purposes of those provisions (Food and Agricultural Code Section 4061(a) and PRC Section 42926 (d)). As such, DAAs are no longer required to submit an annual state agency waste management report to CalRecycle's State Agency Reporting Center (SARC) by May 1 or a State Agency Buy Recycled Campaign report (SABRC) by March 1 of each year for "Calendar Year" reporters or October 31 for "Fiscal Year" reporters.

- **Agencies/Facilities Submitting Full Reports: Finding of Adequate Program Implementation and Compliance with Statutory Diversion Requirements (Attachment 1):**

Staff found 127 of the 171 State agencies and facilities that submitted full reports to have fully implemented programs and met the diversion mandates. Each of these State agencies and facilities had fully implemented programs and met the diversion requirement pursuant to PRC Section 41921. Additionally, each of these agencies was in compliance with the PRC Section 42649. However, as a result of reviewing each of these State agencies/facilities for compliance with PRC Section 42649.8, staff found that 7 met the threshold of 8 cubic yards of organic waste per week, but did not have an organics recycling program in place in 2016. LAMD staff discussed the program gap(s) with each agency/facility and provided each one 30 days to provide a plan to correct the gap(s). Consequently, all of the agencies/facilities responded with adequate information to ensure that the gap was or will be addressed (see below for summary). Three of these facilities (California Institution for Men, Chino; Department of State Hospitals – Patton; and California Correctional Institution) addressed the organics recycling program gap, but were also out of compliance for recycled content procurement (see summary on pages 9-10). Additionally, 38 of the State agencies and facilities that submit full reports were found to not be in compliance with the recycled content procurement requirements (see page 8 below for further discussion).

The following is a summary for each of the four agencies/facilities regarding gaps with organics recycling pursuant to PRC Section 42649.8. This summary also includes information from the agencies/facilities that addressed how they have or will correct the program gaps.

California Department of Transportation, District 4: District 4 reported in the Annual Report that it met the 8 cubic yard of organics/week threshold and did not have an organics recycling collection service.

Program Gaps Addressed: After discussing the gap with the District, staff determined that the District had overestimated its organics because the District staff thought they were reporting on both trash and organics for the threshold. Thus, the District meets the 2017 threshold (4 cubic yards of organics/week) and not the 2016 threshold. Additionally, the District will be going out to bid for a new service contract (which will include organics) in Fall 2017. Staff will follow-up in early 2018 to assess progress.

California State University Los Angeles -- Los Angeles County High School for the Arts): The facility did not have a formal organics recycling program in 2016.

Program Gaps Addressed: The University had an unofficial program in 2016, but on July 1, 2017, it entered into an official contract for organics recycling services. Staff received a copy of the hauler contract that includes collection of food scraps and other organics. Staff will verify in 2018 that all generators on campus and the off campus facilities have access to the food waste collection program.

Veterans Home of California – Yountville: The institution did not have an organics recycling program in 2016.

Program Gaps Addressed: The institution had not been able to allocate funding until 2017. Staff determined that the delay was reasonable and verified with the hauler that the facility began food waste collection service on May 1, 2017.

Chuckawalla Valley State Prison: The institution did not have an organics recycling program in 2016.

Program Gaps Addressed: Due to a number of challenges, the prison has not yet implemented an organics recycling program. However, the prison has provided a plan to address this. This institution is currently in the process of securing bids from the local hauler to secure services. The prison is also examining options for on-site recycling and soliciting bids for an on-site digester. Staff will verify that a program is in place in 2018.

- **Agencies/Facilities Submitting Modified Reports: Finding of Adequate Program Implementation (Attachment 2):**

Staff found 48 of the 57 State agencies and facilities that submitted modified reports meet the requirements of CalRecycle's alternative reporting structure. These agencies/facilities submitted reports that provide information on the diversion programs implemented by the reporting agencies/facilities. They do not report disposal totals and do not have a 50% equivalent per capita disposal target for their agency/facility. Staff review primarily consisted of an analysis of the information submitted in the electronic annual report, including an analysis to determine if the agency still meets the modified reporting criteria. Site visits were not conducted in most instances. Staff found that each of these agencies was in compliance with the PRC Sections 41921, 42649 and 42649.8. However, nine of the State agencies and facilities that submit modified reports were found to out of compliance with the recycled content procurement requirements (see page 10 below for further discussion).

- **Agencies/Facilities Submitting Full Reports: Finding of Good Faith Effort to Adequately Implement Programs and be Compliant with Statutory Diversion Requirements (Attachment 3):**

Staff found that of the 171 State agencies and facilities that submitted full reports, 6 reported per capita disposal for the 2016 calendar year that was in excess of the 50 percent equivalent per capita disposal target for the agency/facility and/or reported an increase in disposal over time. However, staff found that these agencies/facilities were adequately implementing solid waste diversion programs and making all reasonable and feasible efforts (i.e., a good faith effort) to be compliant with statutory diversion requirements. Additionally, each of these agencies was found to be in compliance with the PRC Sections 42649 and 42649.8.

Staff review consisted of an analysis of the information submitted in the electronic annual report and one or more site visits to each of these State agencies and large State facilities to

assess program implementation and effectiveness. The general basis for staff's analysis and finding of a good faith effort for these agencies/facilities is explained below.

- a. **California Institution for Women:** The prison did not have an organics recycling program in 2016, which may have contributed to the institution being over its target for 2016. The previous vendor terminated the contract due to contractual issues. Subsequently, the prison was part of headquarters' RFP for the master contract for food waste recycling. The new contract will start before the end of 2017. CalRecycle staff anticipate that the new food waste contract will bring down the disposal numbers and put the prison on track to be under target. Staff will conduct another site visit in early 2018 to verify program implementation. Based upon the meeting and tour, staff recommends that California Institution for Women is making a good faith effort.
- b. **California Department of Transportation, District 12:** The District initially reported over 29,000 tons of disposal. CalRecycle staff asked the District's recycling contact to review the records again; as a result, the disposed portion of the reported 29,000 tons was corrected to be 6,565 tons with the rest of the original reported tons being either reused or recycled. The facility corrected this data error in the annual report and had an estimated 82% recovery rate overall. Staff determined the facility is fully implementing its recycling programs.
- c. **Department of State Hospitals – Coalinga:** This facility did not meet its target and had a spike in disposal. The biggest factor in the facility not meeting its target is the disposal of all inmate mattresses that were collected as well as those that were stored waiting for a recycler (over 1500 soiled mattresses). The recycler would not take the mattresses because it was not able to get any reimbursement through the Mattress Recycling Council. . The other reason for the spike in disposal is the removal of all dilapidated furniture in the entire facility. The warehouse manager ensured that furniture pieces were not able to be recycled. Although this facility continues to work towards targeting recycling opportunities, finding recycling markets for mattresses continues to be problematic. Another area that the facility can address disposal is regarding food waste. The facility has had a Somat dehydrator system in place for the past seven years. Every three months, the load of dehydrated food is landfilled. Given the institution has Mid-Valley as the hauler, staff will be working immediately with the institution and hauler to establish a plan of action to increase the recyclables and create a cleaner food waste stream for composting.
- d. **Veterans Home of California- Chula Vista:** Veterans Home of California –Chula Vista's disposal is increasing; however, during staff's site visit, a plan of correction was established. The facility worked with its hauler to start a mixed recycling bin, is providing more education and outreach to the staff, is resurrecting its Earth Tub to recycle organics, and is working with the City of Chula Vista. Staff also discovered incorrect populations were reported in 2005-2008; therefore, the agency's targets are incorrect. In between 2014 and 2015, the Veterans Home of California – Chula Vista experienced a spike in their annual target for employees. However, staff found out

that a number of staff were laid off due to a program no longer running. Staff will follow-up in six months to verify that the programs are being fully implemented.

- e. An erroneous target exists for multiple agencies for a variety of reasons. The 2006 data for the 50% per capita disposal target is imprecise due to a number of factors such as a year of relative inactivity leading to inaccurate collection of generation data and reporting. Therefore, the data submitted in 2006 is much less than the general trend for a given agency/facility. Since the 50% per capita equivalent disposal target is calculated based on the 2006 generation data submitted, the data is lower than would be expected. Hence, analysis relies heavily on program implementation, disposal trends and per capita disposal rates independent of the target. The following agencies are over target and fall under this category and are currently implementing programs:
 - i. **California Department of Insurance:** The annual disposal rate decreased by approximately 18% as compared to the prior year, although the number of employees remained approximately the same. This agency continues to expand programs and educate their staff.
 - ii. **Department of General Services, Fleet and Asset Management:** The annual disposal rate has decreased by approximately 15% since 2014. The number of employees remains approximately the same over the last three years. This large state facility continues to implement programs.
- **Agencies/Facilities Submitting Full Reports: Finding of Inadequate Program Implementation and Non-compliance with Statutory Diversion Requirements (Attachment 4):**

Staff also has determined that there are a total of 47 State agencies/facilities found to be out of compliance with procurement requirements for the review cycle covering 2015-2016. As a result, these agencies will be referred to the Department of General Services. This is based on the following analysis.

In addition to managing and diverting waste, the State Agency Integrated Waste Management Act (Assembly Bill 75) also mandated that State agencies should procure products with recycled content in accordance with existing programs and measures (PRC Section 42920). This requirement is directly related to the obligations State agencies have regarding recycled-content procurement pursuant to the State Agency Buy Recycled Campaign (SABRC) (Public Contract Code Sections 12200-12217). State agency procurement of recycled-content products helps expand markets for these products, which in turn helps in the State's efforts to meet the 75% reduction, recycling, and composting goal by 2020.

In particular, State agencies are mandated to purchase products that contain a specified minimum postconsumer recycled content and submit an annual report to CalRecycle on

dollars spent on products purchased in eleven product categories³. CalRecycle monitors and analyzes State agency procurement of recycled content products through review of these annual reports. Following submission and analysis of the 2015/2016 annual reports, of the 228 State Agencies and facilities in this review cycle, CalRecycle determined that 47 agencies/facilities did not fully comply with the minimum recycled content procurement requirements.

Currently, CalRecycle utilizes DGS' annual delegated purchasing authority renewal process as a tool to address non-compliant agencies. Over one-half of State agencies have what is known as delegated and/or statutory authority to purchase products, outside of DGS's own statewide contracts. Agencies with this authority may purchase goods and services independently, including through service contracts where the agencies may not report these expenditures separately from the services rendered and where the contracts may not include SABRC purchasing and reporting requirements for the contractors and subcontractors. To address this, CalRecycle and DGS staff established a process that includes CalRecycle identifying agencies not meeting their SABRC requirements, reporting that information to DGS, and working with DGS to target additional outreach, assistance, and training to those agencies. As a result of referring the 47 non-compliant agencies in this review cycle to DGS, CalRecycle and DGS are discussing further aspects of the process, for example with respect to notifying non-compliant agencies and then having those agencies inform CalRecycle about how deficiencies will be addressed. This process will be important in getting agencies to rectify their SABRC deficiencies and comply with the SABRC requirements.

Of the 47 agencies/facilities that have been referred to DGS, the following three facilities were also identified as not having implemented the required organics recycling program in 2016. The facilities were informed of the gap and have addressed how the program will be implemented. Below is a summary:

California Institution for Men, Chino (CIM): The prison reported in the Annual Report that it met the threshold for 2016, but did not have an organics recycling collection service.

Program Gaps Addressed: The prison did not have organics recycling collection service in 2016 because the recycling vendor terminated the contract due to contractual issues. However, the prison is working with headquarters to secure a new service provider and this contract is expected to be in place by the end of 2017. Staff will conduct another site visit in the spring of 2018 to verify program implementation.

Department of State Hospitals – Patton (PSH): Institution did not have an organics recycling program in 2016 for food waste.

Program Gaps Addressed: The delay in the program in 2016 was a result of the institution being in the process of accepting bids to build the new kitchen facility. The agency will fully implement the program in 2018. Staff has determined that the delay

³ <http://www.calrecycle.ca.gov/BuyRecycled/StateAgency/Manual/Tools/ProdCategory.pdf>

was reasonable. Also, the institution will ensure that the new CalGreen Building Codes will be incorporated into the new construction project. Staff will schedule site visit in 2018 to verify program implementation.

California Correctional Institution (CCI): The institution is currently dehydrating its food waste and then it is sent to the landfill.

Program Gaps Addressed: Staff received a plan of action from the institution as to how they will address their recyclables and food waste. Staff will be monitoring the implementation of the plan in the next six months to ensure adequate progress is being made.